

**Before the
Federal Communications Commission**

In the Matter of an)
)
)
Appeal) CC Docket No. 02-6
)
and)
Petition for Waiver)
)
Greenville County School District)

**Appeal
and
Petition for Waiver**

October 22, 2010

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W. Suite TW-A325
Washington, D.C. 20554

This is an Appeal from a decision by the USAC Administrator and Petition for
Waiver

(1) FCDL Letter Appealed

Exhibit A

Form 471 Application Number:	691942
Funding Year:	07/01/2009-06/30/2010
BEN:	127215
Date of Funding Denial Notice:	May 18, 2010
Date of Appeal/Waiver Petition:	October 22, 2010

(2) Contact Information

Nathaniel Hawthorne
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(3) **Funding Request Numbers Appealed**
1899032¹

(4) **USAC's Reason for Funding Denial**

Funding is denied because:

Insufficient documentation Funding Commitment Decision Explanation: DR1: FCC Rules require that tariff and month-to-month services be posted on a Form 470 each funding year, and the cited Form 470 was not posted for this funding year. ◇◇◇◇◇ DR2: Applicant has not provided sufficient documentation to determine the eligibility of this item. No documentation was provided for item(s): Form 470 for Funding Year <07/01/2008 - 06/30/2009.

(5) **Facts:**

- The Administrator already had the relevant FCC Form 470 on file; the 470 was timely filed.
- The Applicant was not seeking new service.
- The relevant FCC Rule only requires that a new 470 is posted when seeking service for which a "new contract" is required.

Law and Argument

I. Waiver for Greenville's Late Filed Appeal is Warranted.

A. Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 470) are Confusing

The 470 Instructions are confusing, but the relevant parts of the 470 Instructions appear to provide:

We will use the information you provide to determine whether approving this application is in the public interest.

¹ "Telephone Service" refers to communication that takes place using the public switched telephone network. ***

• **Wireless telephone services, e.g., cellular service***** *Schools and Libraries' Eligible Services List*

<http://www.usac.org/sl/tools/required-forms.aspx>

a : relating to, being, or forming a logical disjunction ; **b** : expressing an alternative or opposition between the meanings of the words connected <the *disjunctive* conjunction *or*> **c** : expressed by mutually exclusive alternatives joined by *or* <*disjunctive* pleading>

<http://www.merriam-webster.com/dictionary/disjunctive>

Thus, a new 470 was required only if a **contract** for new services were selected.

Commonly, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). Moreover, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir.1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.

Id. [Emphases added]

Courts have examined the Commission's waiver authority and held,

An applicant for waiver faces a high hurdle even at the starting gate. "When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action." *Rio Grande Family Radio Fellowship, Inc. v. FCC**** Yet an application for waiver has an appropriate place in the discharge by an administrative agency of its assigned responsibilities. The agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure *for consideration of an application for exemption based on special circumstances.* *Wait Radio v. Federal Communications Commission*, 418 F.2d 1153[Emphases added]

The salutary presumptions do not obviate the need for serious consideration of meritorious applications for waiver, and a system where regulations are maintained inflexibly without any procedure for waiver poses legal difficulties. The Commission is charged with administration in the "public interest." 418 F.2d 1153 [Emphases added]

*** provision for waiver may have a pivotal importance in sustaining the system of administration by general rule. 418 F.2d 1153 The somewhat perfunctory treatment in the Commission's opinion is capped by the startling statement in paragraph 6 that the application is subject to dismissal out of hand because it revealed that in the absence of waiver there would be a violation of the Commission's rules.

B. Deviation (waiver of the appeal deadline) will serve the public interest for the Applicant, Greenville County School District.

"[P]ublic interest" is set forth in the *Telecommunications Act of 1996(Act)*. The

Act provides, in relevant part:

"SEC. 254. Universal Service.

"(a) Procedures To Review Universal Service Requirements.—

"(1) Federal-State Joint Board On Universal Seervice.—

Within one month after the date of enactment of the Telecommunications Act of 1996, the Commission shall institute and refer to a Federal-State Joint Board under section 410(c)a proceeding to recommend changes to any of its regulations in order to implement sections 214(e) and this section, including the definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for

completion of such recommendations. ***

“(c) Definition.—

“(1) In General.—Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services. The Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services—

“(A) are essential to education,***[see FN 1, pg2]

“(2) Commission Action.—The Commission shall initiate a single proceeding to implement the recommendations from the Joint Board required by paragraph (1) and shall complete such proceeding within 15 months after the date of enactment of the Telecommunications Act of 1996. The rules established by such proceeding shall include a definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for implementation. Thereafter, the Commission shall complete any proceeding to implement subsequent recommendations from any Joint Board on universal service within one year after receiving such recommendations.

“(b) Universal Service Principles.—The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

“(1) Quality And Rates.—Quality services should be available at just, reasonable, and affordable rates.

“(2) Access To Advanced Services.—Access to advanced telecommunications and information services should be provided in all regions of the Nation.

Further, Sec. 254. of the Act states:

“(h) Telecommunications Services For Certain Providers.—

(1) In General. _

“(B) Educational Providers ***.—All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection(c)(3), provide such services to elementary schools ,secondary schools, *** for educational purposes

“(C) *Public Institutional Telecommunications USER.*—The term ‘public institutional telecommunications user’ means an elementary or secondary school, ***

Likewise, the *Conference Report, February 1, 1996, Report 104-230*, crystallizes public interest.

Here, “public interest” for the FCC is:

[t]he ability of K–12 classrooms, **** to obtain access to advanced telecommunications services is critical to ensuring that these services are available on a universal basis. The provisions of subsection (h) will help open new worlds of knowledge, learning and education to all Americans—rich and poor, rural and urban. They are intended, for example, to provide the ability to browse library collections, review the collections of museums, or find new information on the treatment of an illness, to Americans everywhere via schools and libraries. This universal access will assure that no one is barred from benefiting from the power of the Information Age.

And:

Pursuant to new subsection (c)(3), the Commission is authorized to designate a separate definition of universal service applicable only to public institutional telecommunications users. In so doing, the conferees expect the Commission *** to take into account the particular needs of ***K–12 schools ****. New subsection (h)(2) requires the Commission to establish rules to enhance the availability of advanced telecommunications and information services to public institutional telecommunications users. For example, the Commission could determine that telecommunications and information services that constitute universal service for classrooms **** shall include dedicated data links and the ability to obtain access to educational materials, research information, statistics, information on Government services, reports developed by Federal, State, and local governments, and information services which can be carried over the Internet. ***[Emphases added]

Therefore, in light of the Congressional mandate, a waiver for Greenville is in the public interest.

II. New FCC Form 470 Was Not Required

A. Administrator’s error

The Administrator erred in stating that:

DR1: FCC Rules require that tariff and month-to-month services be posted on a Form 470 each funding year, and the cited Form 470 was not posted for this funding year. ◇◇◇◇◇ DR2: Applicant has not provided sufficient documentation to determine the eligibility of this item. No documentation was provided for item(s): Form 470 for Funding Year <07/01/2008 - 06/30/2009.

The FCC's Rule provides, in relevant part:

§ 54.511 Ordering services.

(3) The competitive bid system will be deemed to be operational when the Administrator is ready to accept and post FCC Form 470 from schools **** on a website and that website is available for use by service providers.

And the FCC's Order in Approach Learning and Assessment Centers DA 08-2380, Rel.

and Adopted: October 30, 2008, provides, in relevant part,

3. In accordance with the Commission's rules, an applicant must submit for posting on USAC's website an FCC Form 470 requesting discounts for E-rate eligible services for which the applicant is **seeking a new contract**. The applicant must describe the desired services with sufficient specificity to enable potential service providers to submit bids.

B. Applicant was not seeking a new contract for new service

Here, the Applicant was not seeking a "new contract" for new service, but was **continuing existing "cell" service**. Exhibit B Thus, a new FCC 470 was not required. The relevant 470, 554840000660887, was timely posted for "cell service". *Id.* This same 470 was appropriate for FY 2008, and FY 2009. Exhibit C

C. USAC Denials²

² The FCC, Sixth Report and Order, discussed 470s and new contracts for service, but did not discuss whether an existing 470, posted in accordance with the FCC's Rules, where the applicant is already receiving service under that 470, and desires to continue that exact same service, was appropriate.

This Commission is aware that the number of USAC's "denials largely stem purely from technical deficiencies rather than the applicant's failure to conduct a fair and open competitive bidding process." *Sixth Report and Order, Para. 70, CC Docket 02-6, Adopted September 23, 2010*

There is no evidence of waste, fraud or abuse with Greenville.

The Applicant's 470 was posted and available to all potential bidders for the duration of the bidding process in FY 2008.

Applicant is well aware that if the service, cell service, had changed in any respect a new 470 had to be posted. In other words, additions or modifications to the FCC Form 470 or other requirements or specifications in service had to be available to all potential providers at the same time and in a uniform manner. *Sixth Report and Order, Para 86.*

CONCLUSION

Since Greenville is seeking a waiver of the FCC's rule permitting it to entertain this appeal, it has set forth particular facts and circumstances which warrant a waiver. See, *Rio Grande Family Radio Fellowship, Inc. v. FCC* quoted by *Wait Radio v. Federal Communications Commission, supra*. Even given the recitation of those specific facts, this Commission must consider the "application for [an] exemption based on special circumstances. Yet an application for waiver has an appropriate place in the discharge by an administrative agency of its assigned responsibilities." Here, **that** **is** the public interest set forth in the Act. The agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve

procedure for consideration of an application for exemption based on special circumstances. *Wait Radio v. Federal Communications Commission*, 418 F.2d 1153[Emphases added]

As the Court said in *Wait Radio*, “salutary presumptions do not obviate the need for serious consideration of meritorious applications for waiver, and a system where regulations are maintained inflexibly without any procedure for waiver poses legal difficulties.” Id.

Applicant asks that the FCC grant a waiver for this appeal, instruct the Administrator to grant funding for the Applicant.

Respectfully submitted,



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Attorney for Greenville County School District

FUNDING COMMITMENT REPORT
Billed Entity Name: GREENVILLE COUNTY SCHOOL DIST
BEN: 127215
Funding Year: 2009

Comment on RAL corrections: The applicant did not submit any RAL corrections.

Form 471 Application Number: 691942
Funding Request Number: 1899032
Funding Status: Not Funded
Category of Service: Telecommunications Service
Form 470 Application Number: 554840000660887
SPIN: 143006742

Exhibit A

Service Provider Name: Sprint Spectrum, L.P.
Contract Number: MTM
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2009
Service End Date: 06/30/2010
Contract Award Date: N/A
Contract Expiration Date: N/A
Shared Worksheet Number: 1129453
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$248,058.24
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-discount Amount: \$248,058.24
Discount Percentage Approved by the USAC: 60%
Funding Commitment Decision: \$0.00 - Insufficient documentation
Funding Commitment Decision Explanation: DR1: FCC Rules require that tariff and month-to-month services be posted on a Form 470 each funding year, and the cited Form 470 was not posted for this funding year. <><><><><> DR2: Applicant has not provided sufficient documentation to determine the eligibility of this item. No documentation was provided for item(s): Form 470 for Funding Year <07/01/2008 - 06/30/2009.

FCDL Date: 05/18/2010
Wave Number: 053
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2011

FCC Form

Approval by OMB
3060-0806**470**

Schools and Libraries Universal Service Description of Services Requested and Certification Form

Estimated Average Burden Hours Per Response: 4.0 hours

This form is designed to help you describe the eligible telecommunications-related services you seek so that this data can be posted on the Fund Administrator website and interested service providers can identify you as a potential customer and compete to serve you.

Please read instructions before beginning this application.

(To be completed by entity that will negotiate with providers.)

Block 1: Applicant Address and Identifications

Form 470 Application Number: 554840000660887

Applicant's Form Identifier: CELL470

Application Status: CERTIFIED

Posting Date: 01/09/2008

Allowable Contract Date: 02/06/2008

Certification Received Date: 02/07/2008

Exhibit B

1. Name of Applicant:

GREENVILLE COUNTY SCHOOL DIST

2. Funding Year:

07/01/2008 - 06/30/2009

3. Your Entity Number

127215

4a. Applicant's Street Address, P.O.Box, or Route Number

100 BLASSINGAME ROAD

City

GREENVILLE

State

SC

Zip Code

29605

b. Telephone number

(864) 355- 3114

c. Fax number

(864) 355- 8896

5. Type Of Applicant

- ☐ Individual School (individual public or non-public school)
- ☒ School District (LEA;public or non-public[e.g., diocesan] local district representing multiple schools)
- ☐ Library (including library system, library outlet/branch or library consortium as defined under LSTA)
- ☐ Consortium (intermediate service agencies, states, state networks, special consortia of schools and/or libraries)

6a. Contact Person's Name: Stefanie Parker

First, if the Contact Person's Street Address is the same as in Item 4 above, check this box. If not, please complete the entries for the Street Address below.

6b. Street Address, P.O.Box, or Route Number☒ 100 BLASSINGAME ROAD

City

GREENVILLE

State

SC

Zip Code

29605

Check the box next to your preferred mode of contact and provide your contact information. One box MUST be checked and an entry provided.

☒ **6c. Telephone Number** (864) 355- 3114☒ **6d. Fax Number** (864) 355- 8896

6e. E-mail Address **sjparker@greenville.k12.sc.us**

Block 2: Summary Description of Needs or Services Requested

7 This Form 470 describes (check all that apply):

- a. ☒ Tariffed or month-to-month services to be provided without a written contract. A new Form 470 must be filed for non-contracted tariffed or month-to-month services for each funding year.
- b. ☒ Services for which a new written contract is sought for the funding year in Item 2.
Check if you are seeking ☒ a multi-year contract and/or ☒ a contract featuring voluntary extensions
- c. ☐ A multi-year contract signed on or before 7/10/97 but for which no Form 470 has been filed in a previous funding year.

NOTE: Services that are covered by a signed, written contract executed pursuant to posting of a Form 470 in a previous funding year OR a contract signed on/before 7/10/97 and previously reported on a Form 470 as an existing contract do NOT require filing of a new Form 470.

What kinds of service are you seeking: Telecommunications Services, Internet Access, Internal Connections Other than Basic Maintenance, or Basic Maintenance of Internal Connections? Refer to the Eligible Services List at www.sl.universalservice.org for examples. Check the relevant category or categories (8, 9, 10 and/or 11 below), and answer the questions in each category you select.

8 ☒ Telecommunications Services

Do you have a Request for Proposal (RFP) that specifies the services you are seeking ? If you check YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to have and RFP, you risk denial of your funding requests.

- a. ☒ YES, I have released or intend to release an RFP for these services. It is available or will become available on the Web at at or via (check one):

☒ the Contact Person in Item 6 or ☐ the contact listed in Item 12.

- b. ☐ NO, I have not released and do not intend to release an RFP for these services.

Whether you check YES or NO, you must list below the Telecommunications Services you seek. Specify each service or function (e.g., local voice service) and quantity and/or capacity (e.g., 20 existing lines plus 10 new ones). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Attach additional lines if needed.

- c. ☐ Check this box if you prefer discounts on your bill. ☐ Check this box if you prefer reimbursement after paying your bill in full. ☐ Check this box if you do not have a preference.

Service or Function:

Cellular Service

Quantity and/or Capacity:

Over 1000 lines

9 ☒ Internet Access

Do you have a Request for Proposal (RFP) that specifies the services you are seeking ? If you check YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to have and RFP, you risk denial of your funding requests.

- a. ☒ YES, I have released or intend to release an RFP for these services. It is available or will become available on the Web at or via (check one):

☒ the Contact Person in Item 6 or ☐ the contact listed in Item 12.

FY 2008

Exhibit C

FRN: 1757367 FCDL Date: 02/11/2009	
10. Original FRN:	
11. Category of Service: Telecommunications Service	12. 470 Application Number: 108930000457079
13. SPIN: 143001237	14. Service Provider Name: South Carolina Net, Inc DBA Spirit Telecom
15a. Non-Contracted tariffed/Month to Month Service:	15b. Contract Number: 04-S6350
15c. Covered under State Master Contract: Y	15d. FRN from Previous Year: 1622535
16a. Billing Account Number:	16b. Multiple Billing Account Numbers?:
17. Allowable Contract Date: 09/15/2003	18. Contract Award Date: 05/24/2004
19a. Service Start Date: 07/01/2008	19b. Service End Date:
20. Contract Expiration Date: 09/30/2009	
21. Attachment #: A-01	22. Block 4 Worksheet No.: 1022344
23a. Monthly Charges: \$1,691.55	23b. Ineligible monthly amt.: \$.00
23c. Eligible monthly amt.: \$1,691.55	23d. Number of months of service: 12
23e. Annual pre-discount amount for eligible recurring charges (23c x 23d): \$20,298.60	
23f. Annual non-recurring (one-time) charges: 0 23g. Ineligible non-recurring amt.: 0	
23h. Annual pre-discount amount for eligible non-recurring charges (23f - 23g): \$0.00	
23i. Total program year pre-discount amount (23e + 23h): \$20,298.60	
23j. % discount (from Block 4): 62	
23k. Funding Commitment Request (23i x 23j): \$12,585.13	

FRN: 1757368 FCDL Date: 02/11/2009	
10. Original FRN:	
11. Category of Service: Telecommunications Service	12. 470 Application Number: 305290000640476
13. SPIN: 143004824	14. Service Provider Name: BellSouth Telecommunications, Inc.
15a. Non-Contracted tariffed/Month to Month Service:	15b. Contract Number: 08-S7647
15c. Covered under State Master Contract: Y	15d. FRN from Previous Year:
16a. Billing Account Number:	16b. Multiple Billing Account Numbers?:
17. Allowable Contract Date: 12/18/2007	18. Contract Award Date: 01/24/2008
19a. Service Start Date: 07/01/2008	19b. Service End Date:
20. Contract Expiration Date: 01/31/2013	
21. Attachment #: A-02	22. Block 4 Worksheet No.: 1022344
23a. Monthly Charges: \$46,052.95	23b. Ineligible monthly amt.: \$.00
23c. Eligible monthly amt.: \$46,052.95	23d. Number of months of service: 12
23e. Annual pre-discount amount for eligible recurring charges (23c x 23d): \$552,635.40	
23f. Annual non-recurring (one-time) charges: 0 23g. Ineligible non-recurring amt.: 0	
23h. Annual pre-discount amount for eligible non-recurring charges (23f - 23g): \$0.00	
23i. Total program year pre-discount amount (23e + 23h): \$552,635.40	
23j. % discount (from Block 4): 62	
23k. Funding Commitment Request (23i x 23j): \$342,633.95	

FRN: 1757372 FCDL Date: 02/11/2009	
10. Original FRN:	
11. Category of Service: Telecommunications Service	12. 470 Application Number: 554840000660887
13. SPIN: 143006742	14. Service Provider Name: Sprint Spectrum, L.P.
15a. Non-Contracted tariffed/Month to Month Service: Y	15b. Contract Number: MTM
15c. Covered under State Master Contract:	15d. FRN from Previous Year:
16a. Billing Account Number:	16b. Multiple Billing Account Numbers?:
17. Allowable Contract Date: 02/06/2008	18. Contract Award Date:
19a. Service Start Date: 07/01/2008	19b. Service End Date: 06/30/2009
20. Contract Expiration Date:	
21. Attachment #: A-03	22. Block 4 Worksheet No.: 1022344

FY2009

13. SPIN: 143001237	14. Service Provider Name: South Carolina Net, Inc DBA Spirit Telecom
15a. Non-Contracted tariffed/Month to Month Service:	15b. Contract Number: 4400000688
15c. Covered under State Master Contract:	15d. FRN from Previous Year:
16a. Billing Account Number:	16b. Multiple Billing Account Numbers?:
17. Allowable Contract Date: 12/23/2008	18. Contract Award Date: 02/03/2009
19a. Service Start Date: 07/01/2009	19b. Service End Date:
20. Contract Expiration Date: 06/30/2016	
21. Attachment #: LONGDISTANCE	22. Block 4 Worksheet No.: 1129453
23a. Monthly Charges: \$1,604.08	23b. Ineligible monthly amt.: \$.00
23c. Eligible monthly amt.: \$1,604.08	23d. Number of months of service: 12
23e. Annual pre-discount amount for eligible recurring charges (23c x 23d): \$19,248.96	
23f. Annual non-recurring (one-time) charges: 0 23g. Ineligible non-recurring amt.: 0	
23h. Annual pre-discount amount for eligible non-recurring charges (23f - 23g): \$0.00	
23i. Total program year pre-discount amount (23e + 23h): \$19,248.96	
23j. % discount (from Block 4): 60	
23k. Funding Commitment Request (23i x 23j): \$11,549.38	

FRN: 1899032 FCDL Date:

10. Original FRN:

11. Category of Service: Telecommunications Service	12. 470 Application Number: 554840000660887
13. SPIN: 143006742	14. Service Provider Name: Sprint Spectrum, L.P.
15a. Non-Contracted tariffed/Month to Month Service:	15b. Contract Number: MTM
15c. Covered under State Master Contract:	15d. FRN from Previous Year:
16a. Billing Account Number:	16b. Multiple Billing Account Numbers?:
17. Allowable Contract Date: 02/06/2008	18. Contract Award Date:
19a. Service Start Date: 07/01/2009	19b. Service End Date: 06/30/2010
20. Contract Expiration Date:	
21. Attachment #: CELLULAR	22. Block 4 Worksheet No.: 1129453
23a. Monthly Charges: \$33,763.79	23b. Ineligible monthly amt.: \$13,092.27
23c. Eligible monthly amt.: \$20,671.52	23d. Number of months of service: 12
23e. Annual pre-discount amount for eligible recurring charges (23c x 23d): \$248,058.24	
23f. Annual non-recurring (one-time) charges: 0 23g. Ineligible non-recurring amt.: 0	
23h. Annual pre-discount amount for eligible non-recurring charges (23f - 23g): \$0.00	
23i. Total program year pre-discount amount (23e + 23h): \$248,058.24	
23j. % discount (from Block 4): 60	
23k. Funding Commitment Request (23i x 23j): \$148,834.94	

Block 6: Certifications and Signature

Do not write in this area.

Application ID:691942

Entity
Number

127215

Applicant's Form
Identifier

2009PHONES